

## **REAL ESTATE COMMISSION MEETING**

Heber M. Wells Building

Room 210

9:00 a.m.

December 21, 2016

TELEPHONE MEETING

### **MINUTES**

#### **DIVISION STAFF PRESENT:**

Jonathan Stewart, Division Director  
Mark Fagergren, Education and Licensing Director  
Kadee Wright, Chief Investigator  
Justin Barney, Hearing Officer  
Elizabeth Harris, Assistant Attorney General  
Eric Stott, Real Estate Analyst  
Amber Nielsen, Board Secretary  
Van Kagie, Investigator  
Mark Schaerrer, Investigator  
Teresa Larsen, Investigator  
Hillarie Murray, Division Staff  
Lacey Vawdrey, Division Staff  
Faruk Halilovic, Division Staff

#### **COMMISSION MEMBERS PRESENT:**

Lerron Little, Chair  
Lori Chapman, Vice Chair  
Russell K. Booth, Commissioner  
William O. Perry, IV, Commissioner\*  
Calvin R. Musselman, Commissioner

\*Joined call at 9:05 a.m.

#### **GUESTS:**

Tammy Lund	Shane Norris
Matt Ball	Tony Yraguen

The December 21, 2016 meeting of the Utah Real Estate Commission began at 9:02 a.m. with Chair Little conducting.

#### **PLANNING AND ADMINISTRATIVE MATTERS**

Approval of Minutes – A motion was made and seconded to approve the minutes as

written from the November 16, 2016 meeting of the Commission. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Musselman, yes. The motion was approved.

There was no Public Comment.

## **DIVISION REPORTS**

### **DIRECTOR'S REPORT – Jonathan Stewart**

Director Stewart reported on the upcoming legislation. Director Stewart has spoken with Representative Froer. The Division has yet to see a draft of the Division Bill. Representative Froer stated there were a few items he was considering adding to the proposed legislation. Director Stewart will keep the Commission updated as things move forward.

Director Stewart discussed an article in the ARELLO Boundaries December 2016 Newsletter regarding a case in the Ohio Appellate Court: Troja v. Pleatman. This case had to do with disclosure of a felon living next door to the subject property. The buyers originally sued the sellers, which claim was settled. The buyers then pursued a complaint against the real estate brokerage that acted as a dual agent in the transaction, which was found in favor of the brokerage in a trial-level Ohio court. Upon appeal, the Ohio Court of Appeals affirmed the trial court ruling. The article stated:

*In reaching its decision, the appellate court turned to both the common law of agency and the state's real estate licensing laws; noting that Ohio real estate licensees must abide by both. Under the common law a "dual agent representing both a buyer and a seller owes a fiduciary duty to both clients" and has a "duty to disclose to both parties all nonconfidential information that is material to the transaction" [citations omitted]. The state's real estate licensing statutes, briefly summarized, require licensees to disclose any nonconfidential material facts of which they are or should be aware, in the exercise of reasonable skill and care; and to disclose certain known material facts pertaining to the physical condition of a property that the purchaser could not discover through a reasonably diligent inspection. Ohio licensees are not required to discover latent defects, advise on matters outside of the scope of knowledge required for licensure, or verify the accuracy or completeness of a seller's statements unless the licensee is aware of information that should reasonably cause such statements to be questioned [O.R.C. 4735.62, 4735.62(F), 4735.67(A)(B)].*

*The Court of Appeals found no Ohio case law on the issue of whether a real estate agent has a fiduciary duty to disclose that a convicted criminal lives in the neighborhood of a subject property. However, the court turned to an Ohio case involving property in which the previous owners had committed horrendous crimes. The buyers asked a real estate agent why the property had been on the market so long, if somebody had been murdered there, or if "something horrible had happened". The agent knew about the crimes, but answered that the home was "too pricey". The appellate court held in that case that the agent had no duty to reveal the property's history because the "psychological stigma" was not a material defect.*

*In the instant case, the appellate court relied on that principle to rule that the brokerage had no duty to disclose information regarding the neighbor because it was nonmaterial and "...did not even involve the property that was the subject of the transaction."*

Director Stewart thanked the Commissioners for their time and their service; he thanked them for stepping away from their own profession to help the Division and the industry. Director Stewart also thanked the public members who attend the meetings regularly. He stated their input and contributions are very beneficial in making changes and understanding the feeling within the industry.

Chair Little asked Director Stewart what the Utah definition for material defect states. Ms. Wright stated it simply says "material defect" and is not defined.

#### **ENFORCEMENT REPORT – Kadee Wright**

Ms. Wright reported in the month of November the Division received 31 complaints; opened 62 cases; closed 53 cases; leaving 286 open cases. There are 56 cases assigned to the AG's office.

#### **Stipulation for Review**

Jenny Pace

Dale Jaussi

Jared Zimmer

Cheryl Lynn Zimmer

Tony B. Yraguen

Mr. Yraguen and his attorney, Matt Ball, were both present.

#### **EDUCATION AND LICENSING REPORT – Mark Fagergren**

Mr. Fagergren reported there was a slight increase and continued growth in the industry numbers.

Mr. Fagergren asked for some direction from the Commission regarding broker application experience which do not have agency agreements and who only have their name on the REPC. The rules now require that the applicant experience complies with the agency requirements, but the Division has been slightly lenient to this point, as the applicants have been getting up to speed. Commissioner Musselman's opinion is that the Division no longer be lenient toward applicants. Commissioner Booth asked how the Division was being lenient in the past. Mr. Fagergren stated the Division would look at samples and would grant partial credit for the experience. Chair Little wanted to make sure that the Division is clear with their policy and follows that policy; and he agrees with Commissioner Musselman

that the applicants must follow the requirements. Mr. Fagergren discussed the issue some more. He did note that most of the applicants do not have this problem; however, about three or four applications at any given time will have this issue. The Commission continued to discuss this issue.

There are no education stipulations for review.

#### **HEARING OFFICER REPORT – Justin Barney**

There are no licensing stipulations for review.

#### **COMMISSION AND INDUSTRY ISSUES**

Mr. Barney reported there were previously two rule amendments which were approved for filing. The rule amendment on adding the topic of Fair Housing to the core credit for continuing education and changing some of the information of the property management table for broker experience has finished the public comment period. The Commission could make that rule amendment effective with a vote today. The rule amendment on the advertising rules and amending appendices for broker experience points is still in public comment period until January 3, 2017. The Commission could vote today to make that rule effective if there is no public comment received, or could wait until after the public comment period closes. A motion was made to approve and make the rule amendment regarding the topic of Fair Housing and broker experience effective. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. Director Stewart concurs. The motion was approved with Division concurrence.

Chair Little opened the discussion to the issue regarding earnest money disputes and title companies with a hope to come to an agreement on what the purpose of a committee or work group would be. Commissioner Musselman stated the committee would need to look at the issue and see if a rule change would be necessary. Commissioner Perry was concerned that this is something would require title industry involvement. Director Stewart stated an issue would be that the Division cannot regulate title companies; the Department of Insurance would have to make a rule to regulate the title companies. The Commission ultimately agreed that a work group be created with a few commissioners, real estate industry members, title industry title members, and some Division staff. Commissioners Musselman and Booth will be a part of that work group.

A motion was made to close the meeting for the sole purpose of discussing the character, professional competence or physical or mental health of an individual. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes;

Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved.

### **CLOSED TO PUBLIC**

An Executive Session was held from 10:07 a.m. to 10:24 a.m.

### **OPEN TO PUBLIC**

#### **Results of Executive Session**

##### Results of Stipulations

Jenny Pace – Approved with Division Concurrence

Dale Jaussi – Approved with Division Concurrence

Jared Zimmer – Approved with Division Concurrence

Cheryl Lynn Zimmer – Approved with Division Concurrence

Tony B. Yraguen – Approved with Division Concurrence

A motion was made and seconded to adjourn the meeting. Vote: Chair Little, yes; Vice Chair Chapman, yes; Commissioner Booth, yes; Commissioner Perry, yes; Commissioner Musselman, yes. The motion was approved. The meeting adjourned at 10:25 a.m.